

JAN 24 2018

A BILL FOR AN ACT

RELATING TO TELECOMMUNICATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the efficient
2 deployment of broadband infrastructure and technology is
3 important to the future global connectivity and economic
4 viability of our island state. Among the benefits afforded by
5 an advanced broadband infrastructure system are increased and
6 enhanced educational opportunities, telehealth capacity, safety
7 and civil defense communications, economic competitiveness,
8 consumer privileges, and tourism services.

9 To ensure that consumers throughout the State may benefit
10 from these services as soon as possible, and to provide wireless
11 providers with a fair and predictable process for the deployment
12 of small wireless facilities, the legislature finds that laws
13 are needed to specify the extent and way in which the deployment
14 of small wireless facilities and small wireless facilities
15 networks is regulated in the State.

16 The purpose of this Act is to facilitate the deployment of
17 high-speed broadband infrastructure in Hawaii, including small
18 wireless facilities, in a way that encourages new technology and

S.B. NO. 2750

1 ensures a level playing field for competitive communications
2 service providers by establishing an application process for
3 collocation of small wireless facilities or small wireless
4 facilities networks.

5 SECTION 2. Chapter 27, Hawaii Revised Statutes, is amended
6 by adding to part VII a new section to be appropriately
7 designated and to read as follows:

8 "§27- Collocation permits; application, review,
9 approval. (a) A telecommunications carrier proposing to
10 install broadband infrastructure shall submit an application for
11 a permitted use permit to a state or county agency with
12 appropriate jurisdiction over state and county utility poles,
13 light standards, buildings, or structures. The application
14 shall include:

- 15 (1) A geographic description of the project area;
16 (2) A listing and description of the utility poles, light
17 standards, buildings, and structures included in the
18 project for the installation, mounting, operation, and
19 placement of broadband infrastructure, including an
20 assessment of the identifying information, location,
21 and ownership of the listed utility poles, light
22 standards, buildings, and structures; and

S.B. NO. 2750

1 (3) A description of the equipment associated with the
2 facilities to be installed in the project area,
3 including radio transceivers, antennas, coaxial or
4 fiber-optic cables, power supplies, and related
5 equipment, and the size and weight of the equipment to
6 be installed on each pole, building, or structure.

7 An applicant shall be permitted to file a consolidated
8 application involving no more than twenty-five individual small
9 wireless facilities of a substantially similar design.

10 (b) The agency shall evaluate the impact of collocating
11 the broadband infrastructure described in the application to
12 ensure that:

13 (1) The installation of the equipment on the poles,
14 buildings, and structures is done in a manner to
15 protect public health and safety, and safe travel in
16 the public rights-of-way;

17 (2) The utility poles and light standards are able to bear
18 the additional weight of the equipment and that the
19 equipment is not a hazard or obstruction to the
20 public; and

S.B. NO. 2750

1 (3) The project equipment and broadband infrastructure do
2 not interfere with government systems for public
3 safety communication operations or emergency services.

4 (c) The agency shall notify the applicant that:

5 (1) The permit is approved;

6 (2) The permit is approved with modifications;

7 (3) The application is returned with a list of
8 questions requiring more detailed information;

9 (4) The application is disapproved with a list of
10 reasons documenting the denial, including the
11 specific code provisions or standards on which
12 the denial was based; or

13 (5) In the case of a consolidated application, line
14 item approval or disapproval."

15 SECTION 3. Section 27-41.1, Hawaii Revised Statutes, is
16 amended by adding the following definitions to be appropriately
17 inserted and to read as follows:

18 "Collocation" means the installation, mounting,
19 maintenance, modification, operation, or replacement of wireless
20 facilities on a tower, utility pole, light standard, or other
21 existing structures for the purpose of transmitting or receiving
22 radio frequency signals for communications purposes.

S.B. NO. 2750

1 "Light standard" means a street light, light pole, lamp
2 post, street lamp, lamp standard, or other raised source of
3 light located inside the right-of-way of a public road, highway,
4 or utility easement.

5 "Small wireless facilities" means wireless facilities that
6 meet the following qualifications:

7 (1) Each individual antenna, excluding the associated
8 equipment, is no more than three cubic feet in volume,
9 and all antennas on the structure total no more than
10 six cubic feet in volume; and

11 (2) All other wireless equipment associated with the
12 structure, excluding cable runs for the connection of
13 power and other services, does not cumulatively
14 exceed:

15 (A) Twenty-eight cubic feet for collocations on all
16 non-pole structures, including but not limited to
17 buildings and water tanks, that can support fewer
18 than three providers;

19 (B) Twenty-one cubic feet for collocations on all
20 pole structures, including but not limited to
21 light poles, traffic signal poles, and utility

S.B. NO. 2750

1 poles, that can support fewer than three

2 providers;

3 (C) Thirty-five cubic feet for non-pole collocations

4 that can support at least three providers; or

5 (D) Twenty-eight cubic feet for pole collocations

6 that can support at least three providers.

7 "Utility pole" means a pole or similar structure that is
8 used in whole or in part for communications service, electric
9 service, lighting, traffic control, signage, or similar
10 functions.

11 "Wireless facilities" means the set of equipment and network
12 components, including but not limited to antennas, accessory
13 equipment, transmitters, receivers, power supplies, and other
14 associated equipment necessary to provide wireless
15 communications service. "Wireless facilities" shall not
16 include:

17 (1) The structure or improvements on, under, or within
18 which the equipment is collocated;

19 (2) Wireline backhaul facilities; or

20 (3) Coaxial or fiber-optic cable between utility poles or
21 that is otherwise not immediately adjacent to and
22 directly associated with a particular antenna.

S.B. NO. 2750

1 "Wireless provider" means a person or entity that is:

2 (1) A provider of wireless communications service;

3 (2) A wireless telecommunications service provider, as
4 defined in section 269-16.93(d); or

5 (3) Authorized in accordance with chapter 269 to provide
6 facilities-based telecommunications services in the
7 State, and builds, installs, operates, or maintains
8 facilities and equipment used to provide wireless
9 service.

10 "Wireline backhaul" means the transport of communications
11 data or other electronic information by wire from wireless
12 facilities to a network."

13 SECTION 4. Section 46-4, Hawaii Revised Statutes, is
14 amended to read as follows:

15 **"§46-4 County zoning.** (a) This section and any
16 ordinance, rule, or regulation adopted in accordance with this
17 section shall apply to lands not contained within the forest
18 reserve boundaries as established on January 31, 1957, or as
19 subsequently amended.

20 Zoning in all counties shall be accomplished within the
21 framework of a long-range, comprehensive general plan prepared
22 or being prepared to guide the overall future development of the

S.B. NO. 2750

1 county. Zoning shall be one of the tools available to the
2 county to put the general plan into effect in an orderly
3 manner. Zoning in the counties of Hawaii, Maui, and Kauai means
4 the establishment of districts of such number, shape, and area,
5 and the adoption of regulations for each district to carry out
6 the purposes of this section. In establishing or regulating the
7 districts, full consideration shall be given to all available
8 data as to soil classification and physical use capabilities of
9 the land to allow and encourage the most beneficial use of the
10 land consonant with good zoning practices. The zoning power
11 granted herein shall be exercised by ordinance which may relate
12 to:

- 13 (1) The areas within which agriculture, forestry,
14 industry, trade, and business may be conducted;
- 15 (2) The areas in which residential uses may be regulated
16 or prohibited;
- 17 (3) The areas bordering natural watercourses, channels,
18 and streams, in which trades or industries, filling or
19 dumping, erection of structures, and the location of
20 buildings may be prohibited or restricted;
- 21 (4) The areas in which particular uses may be subjected to
22 special restrictions;

S.B. NO. 2750

(5) The location of buildings and structures designed for specific uses and designation of uses for which buildings and structures may not be used or altered;

(6) The location, height, bulk, number of stories, and size of buildings and other structures;

(7) The location of roads, schools, and recreation areas;

(8) Building setback lines and future street lines;

(9) The density and distribution of population;

(10) The percentage of a lot that may be occupied, size of yards, courts, and other open spaces;

(11) Minimum and maximum lot sizes; and

(12) Other regulations the boards or city council find necessary and proper to permit and encourage the orderly development of land resources within their jurisdictions.

The council of any county shall prescribe rules, regulations, and administrative procedures and provide personnel it finds necessary to enforce this section and any ordinance enacted in accordance with this section. The ordinances may be enforced by appropriate fines and penalties, civil or criminal, or by court order at the suit of the county or the owner or owners of real estate directly affected by the ordinances.

S.B. NO. 2750

1 Any civil fine or penalty provided by ordinance under this
2 section may be imposed by the district court, or by the zoning
3 agency after an opportunity for a hearing pursuant to chapter
4 91. The proceeding shall not be a prerequisite for any
5 injunctive relief ordered by the circuit court.

6 Nothing in this section shall invalidate any zoning
7 ordinance or regulation adopted by any county or other agency of
8 government pursuant to the statutes in effect prior to July 1,
9 1957.

10 The powers granted herein shall be liberally construed in
11 favor of the county exercising them, and in such a manner as to
12 promote the orderly development of each county or city and
13 county in accordance with a long-range, comprehensive general
14 plan to ensure the greatest benefit for the State as a
15 whole. This section shall not be construed to limit or repeal
16 any powers of any county to achieve these ends through zoning
17 and building regulations, except insofar as forest and water
18 reserve zones are concerned and as provided in subsections (c)
19 and (d).

20 Neither this section nor any ordinance enacted pursuant to
21 this section shall prohibit the continued lawful use of any
22 building or premises for any trade, industrial, residential,

S.B. NO. 2750

1 agricultural, or other purpose for which the building or
2 premises is used at the time this section or the ordinance takes
3 effect; provided that a zoning ordinance may provide for
4 elimination of nonconforming uses as the uses are discontinued,
5 or for the amortization or phasing out of nonconforming uses or
6 signs over a reasonable period of time in commercial,
7 industrial, resort, and apartment zoned areas only. In no event
8 shall such amortization or phasing out of nonconforming uses
9 apply to any existing building or premises used for residential
10 (single-family or duplex) or agricultural uses. Nothing in this
11 section shall affect or impair the powers and duties of the
12 director of transportation as set forth in chapter 262.

13 (b) Any final order of a zoning agency established under
14 this section may be appealed to the circuit court of the circuit
15 in which the land in question is found. The appeal shall be in
16 accordance with the Hawaii rules of civil procedure.

17 (c) Each county may adopt reasonable standards to allow
18 the construction of two single-family dwelling units on any lot
19 where a residential dwelling unit is permitted.

20 (d) Neither this section nor any other law, county
21 ordinance, or rule shall prohibit group living in facilities
22 with eight or fewer residents for purposes or functions that are

S.B. NO. 2750

1 licensed, certified, registered, or monitored by the State;
2 provided that a resident manager or a resident supervisor and
3 the resident manager's or resident supervisor's family shall not
4 be included in this resident count. These group living
5 facilities shall meet all applicable county requirements not
6 inconsistent with the intent of this subsection, including but
7 not limited to building height, setback, maximum lot coverage,
8 parking, and floor area requirements.

9 (e) Neither this section nor any other law, county
10 ordinance, or rule shall prohibit the use of land for employee
11 housing and community buildings in plantation community
12 subdivisions as defined in section 205-4.5(a)(12); in addition,
13 no zoning ordinance shall provide for the elimination,
14 amortization, or phasing out of plantation community
15 subdivisions as a nonconforming use.

16 (f) Neither this section nor any other law, county
17 ordinance, or rule shall prohibit the use of land for medical
18 marijuana production centers or medical marijuana dispensaries
19 established and licensed pursuant to chapter 329D; provided that
20 the land is otherwise zoned for agriculture, manufacturing, or
21 retail purposes.

S.B. NO. 2750

1 (g) A telecommunications carrier proposing to install
2 small wireless facilities or small wireless facilities networks
3 shall submit an application for a permitted use permit to a
4 state or county agency with appropriate jurisdiction over state
5 or county utility poles, light standards, buildings, or
6 structures. The application shall include:

7 (1) A geographic description of the project area;

8 (2) A listing and description of the utility poles, light
9 standards, buildings, and structures included in the
10 project for the installation, mounting, operation, and
11 placement of broadband infrastructure, including an
12 assessment of the identifying information, location,
13 and ownership of the listed utility poles, light
14 standards, buildings, and structures; and

15 (3) A description of the equipment associated with the
16 facilities to be installed in the project area,
17 including radio transceivers, antennas, coaxial or
18 fiber-optic cables, power supplies, and related
19 equipment, and the size and weight of the equipment to
20 be installed on each pole, building, or structure.

21 An applicant shall be permitted to file a consolidated
22 application involving no more than twenty-five individual small

S.B. NO. 2750

1 wireless or wireline facilities of a substantially similar
2 design.

3 (h) The agency shall evaluate the impact of collocating
4 the broadband infrastructure described in the application to
5 ensure that:

6 (1) The installation of the equipment on the poles,
7 buildings, and structures is done in a manner to
8 protect public health and safety, and safe travel in
9 the public rights-of-way;

10 (2) The utility poles and light standards are able to bear
11 the additional weight of the equipment and that the
12 equipment is not a hazard or obstruction to the
13 public; and

14 (3) The project equipment and broadband infrastructure do
15 not interfere with government systems for public
16 safety communication operations, or emergency
17 services.

18 (i) The agency shall notify the applicant that:

19 (1) The permit is approved;

20 (2) The permit is approved with modifications;

21 (3) The application is returned with a list of questions
22 requiring more detailed information;

S.B. NO. 2750

(4) The application is disapproved with a list of reasons
documenting the denial, including the specific code
provisions or standards on which the denial was based;
or

(5) In the case of a consolidated application, line item
approval or disapproval."

SECTION 5. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

SECTION 6. This Act, upon its approval, shall take effect
on July 1, 2018.

INTRODUCED BY: _____



BY REQUEST

S.B. NO. 2750

Report Title:

Technology; Broadband; Wireless Facilities Networks; Zoning;
Counties; State Functions and Responsibilities

Description:

Describes the application process for a permitted use permit to a state or county agency for the collocation of small wireless facilities on state or county utility poles, light standards, buildings, or structures.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO
TELECOMMUNICATIONS.

PURPOSE: Sets up an application process to allow small wireless facilities to be placed on state and county utility poles, structures, and on light standards in order to facilitate the deployment of high-speed broadband infrastructure in Hawaii, subject to state and county agencies' approval or disapproval of the application.

MEANS: Add a new section to chapter 27, Hawaii Revised Statutes (HRS), and amend sections 27-41.1, and 46-4, HRS.

JUSTIFICATION: It is important to have efficient broadband infrastructure for the future global connectivity and economic viability of our island State. Among the benefits of an advanced broadband infrastructure system are increased and enhanced educational opportunities, telehealth capacity, safety and civil defense communications, economic competitiveness, consumer privileges, and tourism services.

Setting up an application process to allow small wireless facilities and networks on state and county utility poles, structures, and light standards would provide these services to the State of Hawaii as soon as possible for the community's benefit.

Impact on the public: The public would benefit from an advanced broadband infrastructure system with increased and enhanced educational opportunities, telehealth capacity, safety and civil defense communications, economic

competitiveness, consumer privileges, and tourism services.

Impact on the department and other agencies:
The appropriate State departments and County agencies will receive applications and issue permits and approvals for the collocation of small wireless facilities and small wireless facilities networks.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: BED-142.

OTHER AFFECTED
AGENCIES: Department of Commerce and Consumer Affairs,
Department of Land and Natural Resources,
Office of Enterprise Technology Services,
Department of Transportation, University of
Hawaii, and Counties.

EFFECTIVE DATE: July 1, 2018.